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BEIJING   BRUSSELS   LONDON   NEW YORK
SAN DIEGO   SAN FRANCISCO   SEOUL
SHANGHAI   SILICON VALLEY   WASHINGTON

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1000

VIA ELECTRONIC MAIL AND ECF   December 12, 2014

Honorable Richard J. Sullivan
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

> RE: *Toto, Inc. v. Sony Music Entertainment*, 12-CV-1434 (RJS) (AJP)

Dear Judge Sullivan:

We represent defendant Sony Music Entertainment ("SME") in the above-referenced matter and write in connection with SME's motion for summary judgment, due December 22, 2014, on the amount of damages that plaintiff Toto, Inc. ("Toto") owes SME on SME's outstanding counterclaims. Pursuant to Local Rule 7.1(d) and ECF Rule 5.2, SME respectfully requests leave to file and serve on counsel as a physical exhibit a CD containing Microsoft Excel spreadsheets that support its damages calculation, and that Your Honor direct the Clerk of the Court to accept SME's filing of such a CD as part of the summary judgment record.

As Your Honor is aware, the parties entered into several agreements for SME's exploitation of Toto recordings in exchange for, *inter alia*, SME's payment of royalties to Toto on revenues generated from such exploitations. (*See, e.g.*, Dkt. 117, at 2). SME's outstanding counterclaims seek recovery of over $500,000, before interest, in royalty overpayments made to Toto over a six-year period—for the royalty periods ending June 30, 2006 through June 30, 2012.
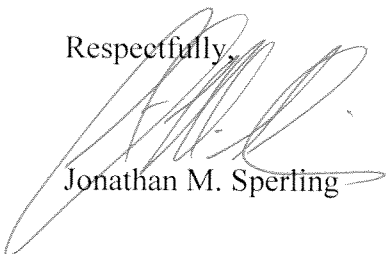
In order to substantiate the amount of the overpayments, SME intends to submit spreadsheets that identify, on a transaction-by-transaction basis, the transactions for which SME claims a royalty overpayment, the amount of the royalty actually paid, the amount of the royalty that should have been paid, and the calculation of the claimed overpayment. These spreadsheets consist of hundreds of thousands of rows of data, and would likely span several thousand pages if legibly printed. The spreadsheets cannot be meaningfully excerpted and filed electronically. SME therefore respectfully requests leave to file and serve a CD containing these spreadsheets, and that an order be entered directing the Clerk of the Court to accept SME's filing of such a CD.

Counsel to Toto consents to SME's request.

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Respectfully,

Jonathan M. Sperling

cc: All Counsel (by ECF)